

REMARKS

The examiner is thanked for the performance of a thorough search. By this amendment, Claims 34, 38, 40, 43-44, 46-47, 49-50, 52-53, and 62-63 are amended, Claims 1, 3-12, 14-23, 25-33 and 54-57 are canceled, and no claims are added. Hence, Claims 34-53 and 58-64 are pending in the application.

The amendments to the claims as indicated herein do not add any new matter to this application. Furthermore, amendments made to the claims as indicated herein have been made to exclusively improve readability and clarity of the claims and not for the purpose of overcoming alleged prior art.

Each issue raised in the Office Action mailed April 19, 2007 is addressed hereinafter.

I. ISSUES NOT RELATING TO CITED ART

A. PTO-1449

The Examiner is thanked for the copies of Information Disclosure Citation Form PTO-1449 filed on October 3, 2005 and another filed on April 27, 2006 that have been initialed.

It is respectfully submitted that the Information Disclosure Citation Form PTO-1449 that was mailed on October 6, 2006 has not been initialed. Additionally, it is respectfully noted that an Information Disclosure Citation Form PTO-1449 was mailed on April 18, 2007. In the next response, please indicate, in a copy of the respective Forms 1449, that the references cited therein have been considered.

B. EXAMINER'S NOTE

The Office Action includes a note that Claim 52 “covers software means when considered” (page 2). The Office Action states, “Examiner notes that the only means for performing simulating in the specification appears to be software,” and “no other specific

structural limitations are disclosed in the specification.” Applicants are unclear what effect this note has on Claim 52 and disagree with the note. The specification does disclose structure corresponding to the “means.”

C. CLAIMS 49-51 AND 53

Claims 49-51 and 53 stand rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter.

Claims 49-51 and 53 are directed towards a computer-readable storage medium. However, the arguments of the Office Action seem to suggest that Claims 49-51 and 53 are directed towards a signal. The plain meaning of “a computer-readable storage medium carrying instructions” requires that the storage medium *store* the instructions so that they may be read by a computer. A signal is not a computer-readable storage medium because a signal is not a medium that is capable of storing instructions that may be read by a computer. While it is true that a signal may *carry* instructions, those instructions carried by a signal are not *stored*. For example, volatile or non-volatile memories may store instructions, whereas a signal cannot. The Applicants acknowledge that the Office’s current position is that signals are not patentable subject matter, but a computer-readable storage medium is not a signal.

The Patent Office has previously acknowledged that claims directed to a computer-readable storage medium are patentable (see *In re Beauregard*). Even after the adoption of the current Interim Guidelines, the USPTO continues to issue many patents with claims directed towards a computer-readable storage medium.

Further, a computer-readable storage medium qualifies as an article of manufacture, which is expressly recognized as patentable subject matter under 35 U.S.C. § 101.

Consequently, it is respectfully submitted that each of Claims 49-51 and 53 is directed towards statutory subject matter, and the rejection made under 35 U.S.C. § 101 is respectfully

requested to be withdrawn. If the Office does not withdraw the rejection made under 35 U.S.C. § 101, the Office is respectfully invited to (a) more particularly explain why a computer-readable storage medium does not qualify as an article of manufacture under 35 U.S.C. § 101, and (b) explain why *In re Beauregard* is not applicable.

D. CLAIMS 1, 12, 23, AND 54

Claims 1, 12, 23, and 54 were under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter. Claims 1, 12, 23, and 54 are canceled herein, which obviates this rejection.

II. ISSUES RELATING TO CITED ART

Claims 1, 6, 8-11, 12, 17, 19-22, 23, 28, 30-33, and 54 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,202,207 issued to Donohue (“*Donohue*”). Claims 1, 6, 8-11, 12, 17, 19-22, 23, 28, 30-33, and 54 are canceled herein, which obviates this rejection.

Claims 34, 35, 39-41, 43-53, 58, 59, 63, and 64 stand rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,314,565 issued to Kenner et al. (“*Kenner*”). This rejection is respectfully traversed.

Claims 3-5, 14-16, 25-27, and 55-57 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Donohue*, in view of U.S. Patent Publication No. 2003/0110482 to Ferguson et al (“*Ferguson*”). Claims 3-5, 14-16, 25-27, and 55-57 are canceled herein, which obviates this rejection.

Claims 7, 18, and 29 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over *Donohue*, in view of U.S. Patent No. 6,282,711 issued to Halpern et al.. Claims 7, 18, and 29 are canceled herein, which obviates this rejection.

Claims 36-38, 42, and 60-62 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kenner*, in view of *Ferguson*. This rejection is respectfully traversed.

A. CLAIM 34

Present Claim 34 recites:

A method of software change modeling of networked nodes on a computer system, the method comprising the computer-implemented steps of:
simulating, using a software update simulator on a computer system, processes from at least one node of the networked nodes;
wherein each simulated process is a minimal version of a functional process that runs on said node; and
receiving a software update for said node by said software update simulator;
wherein the software update contains a set of one or more software packages;
wherein each software package of the set contains at least one software module with corresponding software dependency information;
wherein said software update simulator notifies a control process for said node that a software update is being requested; and
wherein said software update simulator passes said control process identities of the set of one or more software packages to be updated and **software dependency information.** (emphasis added)

Kenner fails to teach or suggest at least the above-bolded features of Claim 34.

1. *Kenner fails to teach or suggest using a software update simulator to simulate processes from a node in a network*

The Office Action equates the software updating tool (SUT) of *Kenner* with the software update simulator of Claim 34 (page 8). In order to read on Claim 34, the SUT of *Kenner* would have to simulate processes from a node in a network. However, the SUT of *Kenner* **does not simulate any processes** from any node. Indeed, *Kenner* lacks any mention of processes from a node.

The Office Action cites col. 5, lines 2-3 of *Kenner* for disclosing “simulating processes from at least one node on said computer system” as recited in Claim 34. This is incorrect. Instead, that portion of *Kenner* merely teaches that a SUT uses instructions in a script file “to simulate manual transactions between the user terminal and the servers where the desired

upgrades are stored” (col. 5, lines 2-4; emphasis added). The “simulation” referred to in *Kenner* is the simulation of a user entering data into forms via a browser (see col. 8, lines 20-24; col. 9, lines 12-14). Thus, *Kenner* teaches a simulation of a manual process, whereas Claim 34 recites that processes from a node in a network are simulated.

Paragraph 186 of the present application states: “Software change modeling allows a user **to simulate a software change** to a system. The user can discover what effects a software update will have on a node or a set of nodes **without actually impacting the router or computer network.**” In contrast, *Kenner* teaches that user input is simulated and not that a software change is simulated.

2. *Kenner fails to teach or suggest “minimal version of a functional process”*

The Office Action also asserts that “upgrades” mentioned at col. 5, line 3 of *Kenner* discloses “wherein each simulated process is a minimal version of a functional process that runs on said node.” The applicable portion of *Kenner* merely states that the SUT uses a script file:

to simulate manual transactions between the user terminal and the servers where the desired upgrades are stored. [The manual transactions] prompts the servers to send the appropriate components. Once the user terminal receives the data, the updating tool initiates installation of the software or software upgrades on the user terminal.
(col. 5, lines 2-7)

This portion of *Kenner* fails to teach or suggest anything related to a simulated process of a functional process that runs on a node, much less a simulated process that is a minimal process of the functional process. Instead, *Kenner* discloses simulating a manual transaction by entering data into forms of a browser that a user would normally enter.

3. *Kenner fails to teach or suggest “wherein each software package of the set contains at least one software module with corresponding software dependency information”*

Kenner fails to teach or suggest that a software package contains at least one software module with corresponding software dependency information” as recited in Claim 34. The
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Office Action asserts that this feature is inherent, “In software, a module is a part of a program. Programs are composed of one or more independently developed modules that are not combined until the program is linked” (page 9). Applicants disagree that dependency information included in a software package is inherent. Software development commonly involves preparing modules and packages having no dependency information. Further, *Kenner* fails to suggest anything related to dependency information. Applicants request citation of evidence to support the finding of inherency.

4. *Kenner fails to teach or suggest “wherein said software update simulator notifies a control process for said node that a software update is being requested”*

The Office Action cites col. 5, lines 5-7 of *Kenner* for disclosing “wherein said software update simulator notifies a control process for said node that a software update is being requested” as recited in Claim 34. This is incorrect. As discussed previously, the Office Action equates the SUT of *Kenner* with the software update simulator of Claim 34. However, the SUT of *Kenner* does not notify any process of the node upon which it executes that a software update is being requested. Indeed, there is no need for the SUT to do so because the SUT is solely responsible for finding an update and installing the update. Therefore, *Kenner* fails to teach or suggest this feature of Claim 34.

5. *Kenner fails to teach or suggest “said software update simulator passes said control process...software dependency information”*

Claim 34 additionally recites “wherein said software update simulator passes said control process identities of the set of one or more software packages to be updated and software dependency information.” The Office Action cites col. 5, lines 5-7 of *Kenner* for disclosing this feature of Claim 34. This is incorrect. The cited portion of *Kenner* merely states: “installation of the software or software updates on the user terminal.” As discussed previously, the Office Action equates the SUT of *Kenner* with the software update simulator of Claim 34. Even if

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Kenner teaches that the SUT notifies a control process for a node that a software update is being requested, this cited portion of *Kenner* fails to teach or suggest that the SUT passes software dependency information to the control process.

Based on the foregoing, *Kenner* fails to teach or suggest all the features of Claim 34. Therefore, Claim 34 is patentable over *Kenner*. Removal of the 35 U.S.C. § 102(b) rejection with respect to Claim 34 is therefore respectfully requested.

B. CLAIMS 52, 53, AND 58

Independent Claims 52, 53, and 58 are either an apparatus claim or a computer-readable storage medium claim that recite the features of Claim 34 that render Claim 34 patentable over *Kenner*. Therefore, Claims 52, 53, and 58 are patentable over *Kenner* for at least the same reasons discussed above with respect to Claim 1.

C. CLAIM 43

Present Claim 43 recites:

A method of software change modeling of nodes in a network of nodes on a computer system, the method comprising the computer-implemented steps of:
executing a **software update simulator** on said computer system;
wherein said software update simulator runs software components normally run on a master node in the network of nodes;
wherein a current software configuration of a node is loaded into said software update simulator by loading current software modules installed on said node;
wherein a simulation of a software update is requested by loading an updated software image into said simulator;
wherein the software image contains a set of one or more software packages;
wherein each software package of the set contains at least one software module
with corresponding software dependency information;
wherein said software update simulator calculates the software update's impact on said node using a current software configuration of said node; and
displaying the calculation's results to a user. (emphasis added)

At least the above-bolded features of present Claim 43 are not taught or suggested by *Kenner*.

1. *Kenner fails to teach or suggest that a software update simulator runs software components normally run on a master node in a network*

The Office Action equates the software updating tool (SUT) of *Kenner* with the software update simulator of Claim 43 (page 11). In order for this to be true, the SUT of *Kenner* would have to run software components normally run on a master node in a network. It is respectfully submitted that the SUT of *Kenner* does not run software components normally run on a node in a network, much less a master node in the network. The Office Action cites col. 5, lines 2-4 of *Kenner*, which merely states that the SUT “simulate[s] manual transactions between the user terminal and the servers where the desired updates are stored.” This cited portion of *Kenner* lacks any teaching or suggestion that the SUT runs software components normally run on a node in the network.

2. *Kenner fails to teach or suggest “loading current software modules installed on said node”*

The Office Action cites col. 4, lines 54-56 of *Kenner* for disclosing “wherein a current software configuration of a node is loaded into said software update simulator by loading current software modules installed on said node” as recited in Claim 43. However, the cited portion of *Kenner* merely states: “The software updating tool then analyzes configuration information from the user terminal to determine what multimedia software is stored by the system.” The Office Action asserts that “the software configuration must be loaded into the updating tool in order to perform the analysis” (page 11). It is respectfully submitted that the configuration information of the system of *Kenner* is not loaded into the SUT, but rather it is merely analyzed by the SUT. Furthermore, even if the configuration information of the system of *Kenner* is loaded into the SUT, *Kenner* fails to teach or suggest that software modules that are currently installed on the system are loaded into the SUT.

3. *Kenner fails to teach or suggest “wherein a simulation of a software update is requested by loading an updated software image into said simulator”*

The Office Action cites col. 4, lines 44-47 of *Kenner* for disclosing “wherein a simulation of a software update is requested by loading an updated software image into said simulator” as recited in Claim 43. This is incorrect. That cited portion of *Kenner* merely states: “The multimedia software updating tool downloads a script file from an update service provider coupled to the network. The script file contains a list of multimedia software and upgrades located at various sites on the Internet.” This portion of *Kenner* lacks any teaching or suggestion that a simulation of a software update is requested. Indeed, the only simulation referred to in *Kenner* concerns the simulation of a manual data entry, not a software update.

4. *Kenner fails to teach or suggest “wherein each software package of the set contains at least one software module with corresponding software dependency information”*

Kenner fails to teach or suggest that a software package contains at least one software module with corresponding software dependency information” as recited in Claim 43. The Office Action asserts that this feature is inherent, “In software, a module is a part of a program. Programs are composed of one or more independently developed modules that are not combined until the program is linked” (page 12). It is respectfully submitted that dependency information included in a software package is not inherent. Further, *Kenner* fails to suggest anything related to dependency information.

Based on the foregoing, *Kenner* fails to teach or suggest all the features of Claim 43. Therefore, Claim 43 is patentable over *Kenner*. Removal of the 35 U.S.C. § 102(b) rejection with respect to Claim 43 is therefore respectfully requested.

D. CLAIMS 46, 49, AND 63

Independent Claims 46, 49, and 63 are either an apparatus claim or a computer-readable storage medium claim. Each of Claims 46, 49, and 63 recite features discussed above that distinguish Claim 43 from *Kenner*. Therefore, each of Claims 46, 49, and 63 is allowable for the reasons given above with respect to Claim 43.

E. DEPENDENT CLAIMS

The dependent claims not discussed thus far are dependent claims, each of which depends (directly or indirectly) on one of the independent claims discussed above. Each of the dependent claims is therefore allowable for the reasons given above for the claim on which it depends. In addition, each of the dependent claims introduces one or more additional limitations that independently render it patentable. However, due to the fundamental differences already identified, to expedite the positive resolution of this case, a separate discussion of those limitations is not included at this time. The Applicant reserves the right to further point out the differences between the cited art and the novel features recited in the dependent claims.

III. CONCLUSIONS & MISCELLANEOUS

For the reasons set forth above, all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by telephone relating to any issue that would advance examination of the present application.

A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If applicable, a law firm check for the petition for extension of time fee is enclosed herewith. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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